

(UNCLASSIFIED)

INFORMATION PAPER

MCJA-OSC
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SUBJECT: Concurrent Receipt of Incapacitation Pay (INCAP) and Department of Veterans Affairs (VA) Benefits

1. PURPOSE: To provide information to Reserve and National Guard Soldiers about INCAP pay and VA Benefits.

1. FACTS:

a. The purpose of INCAP is to compensate Reserve or Guard Soldiers for injuries incurred in the line of duty, and that prevent the Soldier from performing military duties or from returning to their civilian occupation in which they were employed at the time of injury. INCAP is intended to serve as a **temporary disability compensation**.

b. A Reserve or Guard Soldier who is injured in the line of duty may claim entitlement to two different types of pay: (1) INCAP; and (2) Disability payments, including VA Disability payments and disability retirement, if the disability is permanent.

c. A Soldier who is **physically able to perform their military duties**, but who has a loss of civilian earned income from nonmilitary employment or civilian self-employment as a result of an injury, illness, or disease incurred or aggravated in the line of duty, is eligible for INCAP.

d. INCAP pay terminates when the Soldier is able to return to full military or civilian duties for which he or she is receiving INCAP, or upon a determination of "Not in the Line of Duty," or when the Soldier is discharged from service.

e. A Soldier's right to receive INCAP may be reduced by civilian "earned income". In other words, if a Soldier is receiving civilian earned income, INCAP pay will be reduced by the amount of that income. "Earned income" is defined as income from **nonmilitary employment**, including self-employment. This includes normal wages, salaries, professional fees, tips, or other compensation for personal services. It does not include rents, royalties, retirement pays, dividends or interest, welfare payments, **or other nontaxable Government benefits**.

f. Soldiers must periodically and accurately disclose income from nonmilitary earned income. VA Disability payments are **nontaxable Government benefits**, and therefore not part of the earned income definition or reporting requirements.

g. The confusion about the eligibility to receive both INCAP and VA Disability arises from this rule: A member of a Reserve Component who is drawing a pension, disability compensation, retainer pay, or retirement pay from the United States for prior military service, **and who performs duty for which he or she is entitled to pay**, has to elect whether to receive VA Disability pay or Military pay – but they may not get both. However, INCAP, payable pursuant to 37 U.S.C. § 204, **does not represent payment for duty performed** and is not subject to this rule.

2. CONCLUSION: Payments to Reserve or Guard Soldiers under the provisions of 37 U.S.C. § 204 that are made at a time when they are no longer in an "active duty" status do not represent "active service pay." Therefore, the prohibition against concurrent payment of benefits is not applicable to these payments. Furthermore, since VA Disability payments are nontaxable Government income, Reserve and Guard Soldier receiving INCAP do not have to reduce their INCAP amount due to VA Disability payments.

4. This Information Paper is provided as a service to Soldiers in the MEB/PEB process and is intended as general information only. A Soldiers' Counsel is available to provide specific legal advice to Soldiers involved in the MEB/PEB process. Contact your local Office of Soldiers' Counsel for more information. If you don't know how to reach your local Office of Soldiers' Counsel, please contact your PEBLO or see our website for contact information at <https://www.jagcnet.army.mil/otjagosc>.

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